

John Walker brought this case alleging that Germantown Station Homeowners' Association allowed violations of the community's Declaration of Covenants, Conditions and Restrictions to exist within the community. Specifically, he claimed that the Association failed to enforce the Declaration of Covenants by allowing 12 fences allegedly erected in violation of the Declaration of Covenants to remain. In addition, he alleged two other violations of the covenants in that he claimed Germantown Station allowed play equipment, specifically basketball hoops, to remain overnight in the front yards of numerous homes; and, he claimed that trucks were parked overnight within the community. In his opening statement at a hearing on November 28, 2001, Mr. Walker conceded that the issues regarding the basketball hoops and the truck parking were moot as a result of changes to the community's documents implemented by the Board of Directors and approved by the homeowners. As such, the panel did not examine these issues and considers them resolved.

This dispute dates back to a previous complaint before the Commission which was decided in favor of Germantown Station. Mr. Walker sought permission to construct a picket fence surrounding his yard. The Association denied his application because the standard fence style for the community was a split-rail fence and Mr. Walker filed a complaint with the Commission. After the Commission found against him, Mr. Walker then complained to the Board of Directors about other fences within the community which did not specifically comply with the covenants. When the Board failed to act on his complaints Mr. Walker again came to the Commission for redress.

FINDINGS OF FACT

1. John Walker, respondent, is a homeowner residing at 12922 Summit Ridge Terrace, Germantown, MD 20874. This residence is located in the Germantown Station Homeowners Association.
2. The Germantown Station Homeowners Association is a community located in Germantown, Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions. The relevant provisions of the Declaration that govern this dispute are Article VI, Sections 6.02(d), (s) and (y).
3. On February 6, 2001, Germantown Station amended its Declaration of Covenants, Conditions and Restrictions. A copy of the Amended Declaration was recorded among the Land Records for Montgomery County at Liber 18783, Folio 495 and filed in the Homeowner Association Depository maintained by the Clerk of the Circuit Court for Montgomery County.
4. On March 16, 2001, a special meeting of the Board of Directors of Germantown Station was held in which the Board adopted by a majority vote a resolution finding that all "fences which existed on February 6, 2001, are in compliance with the Declaration of Covenants, Conditions and Restrictions."

CONCLUSIONS OF LAW

1. The Germantown Station Declaration of Covenants, Conditions And Restrictions is a valid and enforceable document. Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992). The February 6, 2001, amendments to the Declaration of Covenants, Conditions

And Restrictions were properly approved and recorded; and, therefore, are valid and enforceable.

2. Article VI, Section 6.02(y), as amended, states that "any fence constructed upon the Property shall not extend forward of that [sic] front building line of the dwelling on the lot upon which any such fence is erected"

DISCUSSION

Neither Mr. Walker nor members of the Germantown Station Board of Directors came before the panel with clean hands. Mr. Walker appears to be continuing his dispute with the Association concerning the denial of his application to install a picket fence that is different from all others within the community. Certain Board members (prior to serving on the Board) had applied for fences that did not comply with the community standard. After these applications were denied, some of these individuals constructed the non-compliant fences anyway. When asked about this during the hearing on November 28, 2001, these individuals each gave some justification for building the non-compliant fences. Their statements to the panel lacked credibility. However, neither Mr. Walker's motives nor Board members' disregard of the community standards is a significant factor in the panel's decision.

During the hearing, Mr. Walker acknowledged that the majority of the non-compliant fences had received permission from the Architectural Committee to be constructed in a non-compliant manner. When it was pointed out to him that Article VI, Section 6.02 of the Declaration authorized the community to grant such variances, he conceded that these fences were not in violation of the governing documents. In addition, Mr. Walker eventually acknowledged that the February 6, 2001 amendments to the Declaration were valid. In light of the validity of the amendments, he conceded that the Board could now approve all the fences about which he complained. Mr. Walker acknowledged that requiring the removal of the fences until an application was filed and approval, followed by re-construction of the fence as it currently exists was not appropriate. He stated that, at this point, all he was seeking was recovery of his costs, including attorneys' fees.

As Mr. Brumback, counsel for Germantown Station, explained during the hearing, the American system¹ for the payment of legal fees is that each party pays for his/her own attorney.

¹ This is in contrast to the British system which generally has the losing party pay
(continued...)

There are, of course, exceptions to this. Under the various exceptions, the "prevailing party" is allowed to seek fee reimbursement. Therefore, the threshold question becomes whether Mr. Walker is a "prevailing party." The answer is "no." Because Mr. Walker is not a "prevailing party," no additional inquiry or examination of the facts is required to determine that an award of fees is not appropriate.

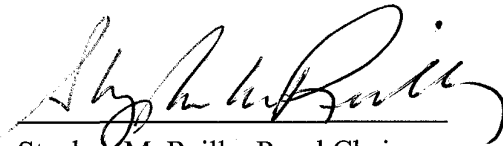
ORDER

In view of the foregoing, and based on the record, for the reasons set forth above, the Commission finds:

All fences in the Germantown Station Homeowners Association that existed as of February 6, 2001, comply with the requirements of the Declaration of Covenants, Conditions And Restrictions and need not be removed. Each party is responsible for its own costs associated with this action.

The foregoing was concurred in by panel members Skobel, Perkins and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership
Communities

¹(...continued)
reasonable fees for the prevailing party.